



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: August 18, 2015

Agenda Item 7B

Approvals:

City Manager MM

Dept. Head CD

Attorney SS

Finance JV

Department: Community Development
Prepared By: Cecilia Gallardo-Daly, Community Development Director

Subject: *ADOPTION OF AN ORDINANCE EXTENDING AN INTERIM URGENCY ORDINANCE ON THE PERMITTING OR ESTABLISHMENT IN COMMERCIAL ZONES OF ALCOHOL OR OTHER DRUG ABUSE PROGRAMS TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE MUNICIPAL CODE; AND A "REPORT OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE OF MEASURES TAKEN TO ALLEVIATE THE CONDITIONS PREVIOUSLY IDENTIFIED AND LEADING TO THE ADOPTION OF A MORATORIUM ON THE PERMITTING OR ESTABLISHMENT IN COMMERCIAL ZONES OF ALCOHOL OR OTHER DRUG ABUSE PROGRAMS IN THE CITY (ORDINANCE NO 1603)".*

Fiscal Impact: *Approval of this item will not result in net city cost (discretionary general funding).*

Summary: Staff recommends that the Council issue the Report of the Council, adopt the Interim Urgency Ordinance extending the moratorium on the establishment or expansion or City approval of alcohol or other drug abuse program uses in commercial zones for 10-months and 15-days, adopt relevant findings, and approve a Notice of Exemption.

Background: On July 7, 2015, the City Council adopted Urgency Ordinance No. 1603, imposing a temporary moratorium on the establishment and permitting of alcohol or other drug abuse programs in commercial zones to allow time for consideration of appropriate amendments to the City Municipal Code. By law, Ordinance No. 1603 could only be in effect for 45 days. The proposed Ordinance extends the moratorium for 10 months and 15 days. This would continue to put a "hold" on the establishment or permitting of alcohol or other drug abuse program uses in commercial zones to allow time for consideration of appropriate amendments to the City Municipal Code. This will allow the City time to analyze the impacts created by these types of uses, develop regulations that are tailored to the impacts, protect the community, and comply with federal and state fair housing laws.

Discussion: There has been an increase in the number of alcohol and other drug abuse programs in California over the last decade. Recently a number of San Clemente businesses and citizens have expressed concern over the proliferation of these uses in commercially zoned areas of the City. Business owners and operators have raised concerns about the adverse impacts on their businesses, and residents have raised concerns about the impacts on their neighborhoods nearby. This includes nuisance complaints and the potential for criminal activity, overcrowding, parking, noise, and a decrease in business that would result from clusters of these types of facilities in close proximity to one another.

The City Municipal Code does not expressly allow for alcohol or other drug abuse program uses in commercial zones. The City has treated these uses as “medical,” the closest equivalent in the code. The definition of “medical” in Municipal Code varies among commercial zones. Alcohol or drug abuse programs do not fit well under “medical” use definitions and programs have unique impacts. Amendments to Municipal Code necessary to ensure alcohol and other drug abuse programs are reasonably regulated, and to ensure facilities blend in with and do not take over commercial areas. The City needs to study these uses and how to best tailor regulations to their character and impacts in a way that is consistent across commercial zones.

Ongoing Planning Studies

Since the July 7, 2015 enactment of the moratorium, staff has been reviewing the work other cities have undertaken to regulate alcohol or other drug abuse programs, including better defining the use, and prohibiting or conditionally permitting the businesses in certain commercial zones.

Staff is also in the ongoing process of reviewing the City’s zoning ordinance to consider revisions. Staff has inventoried the available use definitions in the zoning code that have been loosely interpreted to correspond to alcohol or other drug abuse programs. As part of the ongoing process, staff has also identified all commercial zones where these uses are allowed. Staff anticipates developing a new definition for alcohol and other drug abuse programs, and amending the zoning code to either prohibit or conditional permit these uses in commercial zones.

Staff will prepare revisions to the Zoning Code that would address the land use and operational characteristics, health and safety, and other development and operational issues associated with alcohol or other drug abuse programs in commercial zones. Staff is conducting an orderly, comprehensive, and well-researched assessment of what the potential issues may be resulting from a potential amendment to the Zoning Code.

These proposed revisions will be considered by the Planning Commission. Upon conclusion of the Planning Commission public hearing process, the zoning text amendments will be forwarded to the City Council for consideration.

It is estimated that it will require approximately two months for staff to finalize research of other cities’ requirements and state and federal statutory requirements, identify operational concerns, evaluate permitting options, study and review potential amendments to the City’s zoning code, and re-establish appropriate regulations for alcohol or other drug abuse programs in commercial zones. It is estimated that the Planning Commission consideration would require another month. Based on this timeframe, it is anticipated that amendments to the City’s zoning code related to alcohol or other drug abuse programs will be forwarded to the City Council for consideration. At that point, if Council considers amendments to the Zoning Code warranted, the Council could forward its recommendations and direction to the Planning Commission to initiate review of potential Zoning Code amendments.

The extension of the moratorium will provide an opportunity for the City to assess the concerns that business owners and residents have brought forward concerning these types of uses in commercial zoning districts, analyze the impacts created by these types of uses, develop regulations that are tailored to the impacts, provide protection for the community and comply with federal and state laws.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council adopt an Interim Urgency Ordinance of the City Council of the City of San Clemente, California Under Government Code Section 65858 Extending a Temporary Moratorium on the Permitting or Establishment in Commercial Zones of Alcohol or Other Drug Abuse Programs to Allow Time for Consideration of Appropriate Amendments to the City Municipal Code; adopt the findings related thereto; adopt a Notice of Exemption with regard to the moratorium; and issue this Report of the City Council of the City of San Clemente of Measures Taken to Alleviate the Conditions Previously Identified and Leading to the Adoption of a Moratorium on the Permitting or Establishment In Commercial Zones of Alcohol or Other Drug Abuse Programs in the City (Ordinance No 1603).

Attachments:

INTERIM URGENCY ORDINANCE OF THE CITY OF SAN CLEMENTE EXTENDING THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND PERMITTING OF ALCOHOL OR OTHER DRUG ABUSE PROGRAMS IN COMMERCIAL ZONES TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE.

Notification:

Notification is required under Government Code Section 65858 and public notice was published in the Sun Post.

ORDINANCE NO. __

**INTERIM URGENCY ORDINANCE OF THE CITY OF SAN CLEMENTE
EXTENDING THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND
PERMITTING OF ALCOHOL OR OTHER DRUG ABUSE PROGRAMS IN
COMMERCIAL ZONES TO ALLOW TIME FOR CONSIDERATION OF
APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE**

WHEREAS, the City received a number of applications to construct facilities for or otherwise establish or expand alcohol or other drug abuse programs and anticipates receiving more applications in the future;

WHEREAS, existing zoning regulations do not adequately address alcohol or other drug abuse programs;

WHEREAS, an interim urgency ordinance became necessary to provide the City staff time to study and assess various approaches to regulating the subject land uses and to present recommendations to the City Council. Recommendations may include amendments to the City's Municipal Code addressing the establishment and expansion of alcohol or other drug abuse programs and compliance with state law, including appropriate review procedures;

WHEREAS, other public entities have reported adverse primary and secondary effects from these types of commercial uses, including loitering, noise, litter, and other nuisances, and the City has received complaints from residents and local businesses about the adverse impacts of existing alcohol or other drug abuse programs in the City, impacts that pose an immediate threat to the public health, safety, and welfare in San Clemente;

WHEREAS, consequently, there is a current and immediate threat to the public health, safety and welfare if permits or entitlements for alcohol or other drug abuse programs are issued;

WHEREAS, moreover, the City's Code currently treats alcohol or other drug abuse programs inconsistently across commercial zones: no commercial zone expressly allows for these programs, so until now they have been loosely treated as "medical" uses (in spite of the programs having significant and unique impacts), and "medical" uses are defined differently in different commercial zones;

WHEREAS, the City needed to study these uses and how to best tailor regulations to their character and impacts in a way that is consistent across commercial zones;

WHEREAS, any permits or entitlements for alcohol or other drug abuse programs that could issue while the study is pending might result in land uses and developments that conflict with amendments to the Municipal Code that may be adopted as a result of the study;

WHEREAS, the adoption and immediate enactment of an interim moratorium ordinance and this ordinance are necessary for the preservation of the public health, safety, and welfare to prevent establishment of new uses and the expansion or modification of existing uses at locations that might conflict with and be inconsistent with the intended amendment to the Zoning Code;

WHEREAS, minimizing incompatibility of land uses promotes orderly development, which is necessary to encourage quality neighborhoods and commercial areas;

WHEREAS, this is a matter of importance to the entire City of San Clemente and is not directed at any particular property;

WHEREAS, the City Council adopted Ordinance No. 1603 on 7 July 2015 to establish the needed temporary moratorium;

WHEREAS, the City has begun studying the issues related to these uses but has not yet finished its study and evaluation; and

WHEREAS, Government Code section 65858(a) allows the City Council to extend the interim moratorium ordinance based on the current and immediate threats described above, which continue.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are each incorporated by reference and adopted as findings of the City Council including those relating to the urgency need for this ordinance.

Section 2. The moratorium established by Ordinance No. 1603 is extended for ten months and 15 days, as authorized by Government Code section 65858(a).

Section 3. The City Council finds that this ordinance is not subject to the California Environmental Quality Act under California Code of Regulations, Title 14, Section 15060, subdivision (c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment nor under subdivision (c)(3) because the activity has no potential for resulting in physical change to the environment, directly or indirectly and so is not a project.

Section 4. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 5. This ordinance is declared an urgency measure necessary for the immediate protection and preservation of the public peace, health, safety, and welfare for the reasons stated in the above recitals (incorporated by Section 1), and it takes effect immediately on adoption by the City Council, by at least a four-fifths vote, and signing by the City Clerk. The moratorium remains in effect for ten months and 15 days after the initial 45-day period (for a total of one year from the 7 July 2015 adoption of Ordinance 1603) unless the City Council extends the moratorium under Government Code section 65858. Ten days before the extended moratorium expires, the City Council shall issue a written report describing the measures that the City has taken to address the conditions that led to the adoption of this ordinance.

[Signatures on following page]

APPROVED AND ADOPTED this ___ day of August, 2015.

ATTEST:

Joanne Baade, City Clerk
City of San Clemente

Chris Hamm, Mayor
City of San Clemente

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Urgency Ordinance No. ____, the reading in full thereof unanimously waived, was duly passed and adopted at a regular meeting of the City Council held on the __ day of August, 2015, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this __ day of August, 2015.

Joanne Baade, City Clerk
City of San Clemente

APPROVED AS TO FORM:

Scott C. Smith, City Attorney
City of San Clemente